Supreme Court, U.S.
FILED
MAR 20 1990
JOSEPH F. SAPNIOL, JR.
CLERK

No. 89-1254

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

THURMAN V. WHITFIELD

Petitioner,

V.

THE COCA-COLA COMPANY,

COLIN A. TOPPER CAREW,

ALYCE G. SPROW,

GOLDEN GROOVE PRODUCTIONS, INC.,

NORMAN LEAR,

ACT III COMMUNICATIONS, INC.,

FREDERICK C. TIMM, ESQUIRE,

Respondents.

SUPPLEMENTAL BRIEF

THURMAN V. WHITFIELD

5024 Cedar Avenue

Philadelphia, PA 19143

(215) 747-4854, PRO SE

BEST AVAILABLE COPY

QUESTIONS PRESENTED

1. Are these "new intervening matters" of the Clerk's letter and the "late" conformed order, submitted one and two months after the Opinion of The Third Circuit Court of Appeals, attempts to justify activities alleged to be of "wanton gross negligence" in processing the appeal?

2. Did the Third Circuit err in affirming Clerk's orders granting appellees leave to file a "supplemental appendix" containing fifteen (15) exhibits from other forums with other defendants not heard or in i n the record of the District Court?

3. How could all four (4) copies of the entire District Court record (194 pages) submitted as Appellant's Appendix be missing from the Clerk's Office (no file copy) on November 17, 1989, ten (10) days before appellant's reply brief is due? Are these activities not a repeat of the same "patterns and practices" employed in the Eastern Districts of New York and Pennsylvania?

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OPINIONS BELOW

The Opinion by the United States District Court for the Eastern District of Pennsylvania dismissing the instant action, is at Appendix "A" in the Appendix to the Petition, dated July 25, 1989.

The Opinion by the United States Court of Appeals for the Third Circuit, affirming the District Court dismissal is at Appendix "A-1" in the Appendix to the Petition, dated December 22, 1989.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

STATUTORY PROVISIONS INVOLVED

The Petition sets forth (at pages v-vi) the statutes relevant to the Petition and the one predominant issue herein and throughout nearly nine years of litigation is an unmitigated and blatant fraud against legal and due process in the United States Federal Courts, supervised by this Court's dictate.

CONSTITUTIONAL PROVISION

The Constitutional Provision which this case involves is adequately set forth in the Petition (page iv) and under "RICO and Civil Rights" allegations of fraud and conspiracy, a denial of "due process of law" and "the equal protection of the law", is a violation of the Fourteenth Amendment to the Constitution and of RICO and Civil Rights statutes.

STATEMENT OF THE CASE

A concise statement of the case and of the events leading to this instant action are related (pages 1-4) in the Petition.

The events in this action forcing plaintiff to seek the power of this Court's "supervision" is the deliberate "practice and a pattern" of tampering, fraud, and diversion of plaintiff's submissions to the Court, and this sham became rampant after plaintiff won a reversal in the 2nd Circuit Court of Appeals (751 F.2d 90). New "intervening matters" in support of the above are attached as "Appendices, A, B, B1, and Appendix C".

ARGUMENT

I

In seeking "due process and equal justice" in the Third Circuit Court Clerk's Office plaintiff submitted a letter to the Circuit Executive"s Office on the day his "Emergency Motion" was filed that clearly defined the delay and deceipt encountered by plaintiff in submitting his motions to the court in the belief that this office would observe that the Court Rules be adhered to, and that this motion would be properly submitted to the court, see "Appendix I" to Petition.

On January 29, 1989, plaintiff received a copy of a letter from Clerk Mrvos to Circuit Executive, John P. Hehman which addressed an alleged "complaint of staff misconduct filed in Appeal No. 89-1677" Whitfield v. Coca Cola Company, "Appendix A" hereto.

In correction, Appeal No. for the above action is, 89-1667, not 89-1677, as the clerk well knows and therefore the Clerk's let-

ter will not be filed in the correct case file (if it can be filed) one month after this action was affirmed in the Opinion of the Third Circuit Court of Appeals on December 22 1989.

The only document "filed" was the "emergency motion" on December 18, 1989 pursuant to Third Circuit Rules; Internal Operating Procedure, Chapter 10(A)(2) "as requiring panel action on the same day as motion is filed" but, the motion was never submitted to the Court and the Clerk decided to send a letter citing "complaint of staff misconduct" which is false and incorrect (see pages 20-21 to the Petition.

The "emergency motion" clearly specifies gross negligence and misconduct by the Clerk's office in collaboration with defendant's attorney's, and by Clerk's unauthorized order, appellee's filed a supplemental appendix, cosisting of complaints, documents and defendants not in the lower Court record see (pages 17-18) and "Appendix G" to the Petition.

In Clerk Mrvos letter at paragraph 2, it states "Even assuming, arguendo, that the subject matter of the disputed orders was mistakenly categorized as being procedural, complainant was not prejudiced by the entry of the Clerk's orders because they were independently reviewed by the Court."

If Clerk Mrvos is correct, and the Third Circuit Court of Appeals affirmed the Clerk's orders granting leave to file a supplemental appendix consisting of 127 pages that are not part of the District Court record, never submitted to or reviewed therein, then Petitioner respectfully submits that the Third Circuit Court of Appeals is in error.

How can one appeal that which has never been heard or decided? Webster's Dictionary, states an appeal in law "a transference of a case to a higher Court for rehearing."

Plaintiff must again contend, there is no transfer to the higher Court for a "reh-

earing when there was no primary hearing or case to transfer.

Clerk Mrvos letter states that plaintiff was not prejudiced, if the appendix was "mistakenly categorized as procedural" but, plaintiff has received a bill of cost for a total of Five Hundred Eighty Seven Dollars, and Thirty four Cents ($587.34) of which appellees incorrect supplemental appendix is Five Hundred & Twenty Four Dollars ($524.00) so plaintiff feels very much "prejudiced" by the bill and gross negligence in the processing of the record which continued, unabated as Clerk Mrvos letter verifies at paragraph 3: "Finally, complainant alleges misconduct, and tampering with the record as a result of the inability of the Clerk's office to produce any copies of complainant's appendix on, November 17, 1989", see (pages 19-20) and "Appendix H" in the Petition which verifies the Clerk's violation of the Clerk's own order, and these strange activities continued.

On February 24, 1989, plaintiff received a letter from the Third Circuit Court of Appeals with an order stating that, Appellant's Motion is denied. The letter clearly states that it is a "conformed copy", Submitted on 11-24-89 merits, see "Appendices B-B1 and C". This motion was already denied once.

Is plaintiff to beleive that this order denies his "Emergency Motion" that was never submitted to the Court? The motion is dated, December 11, 1989 but it was not filed until December 18, 1989, "Appendix I" to Petition.

CONCLUSION

By misappropiating plaintiff's script, Boomerang defendants Lear and Carew fraudulently obtained 8 million dollars in federal funds, and this is specified, in the record and is the catalyst for this continuing fraud in the United States Federal Courts that the granting of this Petition will stop.

Respectfully submitted,

5024 Cedar Avenue
Phila, PA 19143
(215) 747-4854

Thurman V. Whitfield
Pro Se

"APPENDIX A"

Office of The Clerk

UNITED STATES COURT OF APPEALS

For The Third Circuit

SALLY MRVOS
Clerk

January 23, 1990

Mr. John P. Hehman
Circuit Executive
Third Circuit Court of Appeals
21613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Mr. Hehman:

I am responding to the complaint of misconduct filed in Appeal No. 89-1677 Whitfield v. Coca Cola Company. The complainant alleges: (1) that the proper procedure in distributing a motion which he designated as an "emergency" motion was not followed, (2) that two orders were improperly entered by the clerk and (3) that the Clerk's Office tampered with the record and failed to make a copy of his appendix available for his review. I have investigated this matter and will

respond to each of these separately in the paragraphs below.

1) The complainant first alleges that the rules were violated when he was not p-ermitted to "deliver by hand" copies of a-n "emergency" motion requiring panel acti-vity on the same day as the motion was fi-led. It appears that the complainant has m isapprehended Third Circuit Internal Oper-ating Procedure IOP Chapter 10(A)(2)..... the rule provides that the Clerk may requ-ire that the movant hand serve a motion by delivering it to the chambers.....but this rarely occurs and only when circumstances warrant.....This was not a situation which required that the motion be hand served.

2) The complaintant in his statement that the "Clerk granted two unauthorized motions," is alleging that the October 27, 1989 and the October 31, 1989 orders entered by the Clerk were improper. The October 27, 1989 order granted appellee's leave to file

a supplemental appendix and the October 31, 1989 order was entered when complainant filed an Affidavit in Opposition to the appellee's motion to file a supplemental appendix...and it noted his opposition and affimed the order .....Contrary to Mr. Whitfield's assertions, entry of these orders did not constitute an abuse of process..... even assuming arguendo, that the subject matter of the disputed orders was mistakenly categorized as being procedural.....since the Court's orders affirmed the prior orders by the clerk.

(3) Finally, complainant alleges misconduct and tampering with the record as a result of the inability of the Clerk's office to produce any copies of complainant's appendix on November 17, 1989.....because it had been either misfiled or otherwise misplaced. The three additional copies..also could not be produced...because they had been transmitted to the Court. A...substitute

copy has been made...is in the Clerk's file and available for the complainant's inspection.....on the basis of my investigation I conclude that there is no merit to any of the complainant's allegations.....

Very truly yours,

Sally Mrvos, Clerk

cc: Complainant
Subject of Complaint
Senior Staff Attorney

(FOOTNOTE)

This letter was received well after this plaintiff's Petition was drawn up, two days before it was filed, and over one month after the Opinion of The Third Circuit Court of Appeals affirmed dismissal. The Clerk's letter never states what became of plaintiff's "emergency" motion, and "this is not a situation that required the motion to be hand served". If an "emergency" motion alleging misconduct and Fraud Upon The Court is not an "emergency" (4 days before the decision) then the rule is useless as plain-

(FOOTNOTE) "APPENDIX A"

tiff addressed Rules of the Third Circuit, Internal Operating Procedures, Chapter 10 (A)(2) Motion Practices; at (pages 20-22) in the Petition. Clerk's letter at paragraph (2) alleges that "plaintiff was not prejudiced, if the Clerk's orders were a mistake in granting appellee's leave to file a supplemental appendix" and plaintiff has addressed that issue at (pages 3-4) hereto, and Clerk's letter at paragraph (3) refers to plaintiff's allegations of "misconduct and tampering" because all four (4) copies of the appendix (194 pages, the complete Court record) were missing and could not be found, not even the file copy, see (pages 19-20, and "Appendix H' to the Petition. The Clerk's letter verifies each allegation by the plaintiff of "gross negligence and abuse of process" by wanton and deliberate activities that will cease, only if this Court exerts the power of its Supervision.

"APPENDIX B"

UNITED STATES COURT OF APPEALS

For The Third Circuit

Sally Mrvos
Clerk

February 20, 1990

Re: Whitfield vs. Coca Cola Co. et al

No. 89-1667

Dear Counsel:

Enclosed herewith is conformed copy of Order filed today in the above entitled case.

Very truly yours
Sally Mrvos, Clerk

By: _____
M. Elizabeth Ferguson

Cheif Deputy Clerk

Direct Dial 597-8465

bj
enc
cc: Mr. T.V. Whitfield

J.M. Brickell,Esq.

"APPENDIX B1"

UNITED STATES COURT OF APPEALS FOR THE

THIRD CIRCUIT

No. 89-1667

WHITFIELD, THURMAN V.
vs.
THE COCA COLA COMPANY, et al.
(E.D. PA Civil No. 89-4299)

Present: HIGGINBOTHAM, MANSMANN and COWEN,

Circuit Judges.

Motion by Appellant Pro Se that Sanctions Double Damages and Costs be Imposed upon Appellees.

Submitted on 11-24-89 Merits.
Gretchen A. Thompson
Deputy Clerk 7-1092

ORDER

The foregoing Motion is Denied

By the Court,

A. Leon Higginbotham
Circuit Judge

Dated: FEB 20 1990

"CONFORMED ORDER"

"APPENDIX C"

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 89-1667

Whitfield, Thurman V. Appellant
vs.
The Coca Cola Company, et al.
(E.D. PA Civil No. 89-4299)

Present: HIGGINBOTHAM, MANSMANN and COWEN, Circuit Judges.

Motion by appellant requesting sanctions, damages, and double costs be imposed upon appellees for unreasonable and vexatious inclusions of unnecessary material in their supplemental appendix, pursuant to F.R.A.P. Rule 30(b), 38, 27(a)(b) & (c), and to Court Rule 2(4) and 11(5).

Debra Rush
Deputy Clerk 7-5019

Appellee supplemental appendix filed 10-27-89
Case listed for disposition on the merits on, 11-24-89.

ORDER

The foregoing Motion of appellant is Denied.

By the Court,

A. Leon Higginbotham
Judge

Dated: Dec 18 1989
GT/cc: TVW
JMB

"ORIGINAL ORDER"

"APPENDIX C"

(FOOTNOTE)

The original order above denying plaintiff's Motion clearly specifies the F.R.A.P. Rules cited in the motion. In the new conformed order ("Appendix B1") the Federal Rules of Appellant Procedure have been removed and this was done two (2) months after the Opinion affirming dismissal on December 22, 1989, and plaintiff has cited these "new intervening matters" as supporting his allegations of "gross negligence" in an ongoing practice and pattern of deceit and diversion initiated by a "corrupt cabal" in New York, to protect "defendant's Lear and Carew (his minority front) who fraudently obtained eight (8) million dollars in federal funds for TV production through misappropiation of plaintiff's script "Boomerang" (original action) and this obscenity to rule of law and the federal judiciary calls for the exertion of this Court's power of supervision, otherwise justice will be denied.